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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

JAMES S. GORDON, JR., an individual residing in Benton County, Washington, Plaintiffs vs. IMPULSE MARKETING GROUP, INC., a Nevada Corporation, Defendants	NO. CV-04-5125-FVS DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR AUTHORITY TO RESPOND TO PLAINTIFF'S STATEMENT OF MATERIAL FACT AND FOR RESCHEDULING OF TELEPHONIC ARGUMENT
IMPULSE MARKETING GROUP, INC., Third-Party Plaintiff, vs. BONNIE GORDON, JAMES S. GORDON, III, JONATHAN GORDON, JAMILA GORDON, ROBERT PRITCHETT and EMILY ABBEY, Third-Party Defendants.	

Defendant counsel Floyd E. Ivey and Plaintiff counsel Mr. McKinley spoke by telephone on Wednesday, October 5, 2005 where Mr. McKinley agreed for the scheduling of this motion for Monday, October 10, 2005 without requiring the filing of a Motion to Expedite.

Plaintiff did not file a LR 56.1 Statement of Material Fact Relied Upon when

Defendant's Memorandum in Support of Motion for Authority to Respond to Plaintiff's Statement of Material Fact and for Rescheduling of Telephonic Argument- 1.
Z:\IPClient\ImpulseMarketingGroup v. Gordon\Pleadings\Plaintiff Motion for Summary Judgment\DefendantMotionTelephonicOralArgument\MotionRespondStatementMaterialFact\Defendant MemorandumRespondToStatementMaterialFact.051006.wpd

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Plaintiff filed its Motion to Dismiss and in the Alternative Motion for Summary Judgment. When Defendant Responded to Plaintiff's Motion there was no Plaintiff's Statement of Material Fact. Plaintiff has filed its "REPLY" and additionally has filed "LR 56.1 STATEMENT OF FACTS RELATED TO PLAINTIFF'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT" on September 30, 2005.

This matter is set for argument October 12, 2005. Defendant moves for authority to file a Response to Plaintiff's STATEMENT OF FACTS and for the rescheduling of the Telephonic Argument set for October 12, 2005. This motion is based on LR 56.1 and Defendant's Memorandum in Support of the Motion for Authority to Respond.

LR 56.1(a) requires that:

> Any party filing a motion for Summary Judgment shall set forth separately from the memorandum of law, and in full, the specific facts relied upon in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to the specific portion of the record where the fact is found. ...The specific portions of the record relied upon shall be attached to the statement of material facts.

LR 56.1(b) requires the party opposing the Motion for Summary Judgment to set forth "...the specific facts which the opposing party asserts establishes a genuine issue of material fact precluding summary judgment...." LR 56.1(c) allows the moving party to file a statement establishing the absence of genuine material fact disputes.

Defendant requests hearing of this motion without oral argument on

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Monday, October 10, 2005 and, assuming the Motion is granted, requests 14 days from the date the order is entered to provide its LR 56.1 (b) Response. Defendant requests the rescheduling of the telephonic argument to such date which will allow Plaintiff ample time for Reply.

DATED this 6th day of October, 2005.

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE

By /s/ FLOYD E. IVEY
FLOYD E. IVEY, WSBA #6888
Local Counsel for Defendant

I hereby certify that on October 6, 2005, I electronically filed **Defendant's Memorandum in Support of Motion for Authority to Respond to Plaintiff's Statement of Material Facts and for Rescheduling Telephonic Argument** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to Douglas E. McKinley, Jr., Peter J. Glantz and Sean A. Moynihan. I hereby certify that I have served the foregoing to the following non-CM/ECF participants by other means: Bonnie Gordon, Jonathan Gordon, James S. Gordon, III and Robert Prichett. I hereby certify that I have served the foregoing to the following persons who are non-CM/ECF participants named in this lawsuit, but who have not yet been served or entered an appearance in this lawsuit by other means: Emily Abbey and Jamila Gordon.

S/ FLOYD E. IVEY
FLOYD E. IVEY

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